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Attorneys for Defendant  
LVNV FUNDING LLC

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

MERCY MESIANO,

Plaintiff,

v.

ERICA L. BRACHFELD AND  
LAW OFFICES OF BRACHFELD  
& ASSOCIATES, PC; LVNV  
FUNDING LLC; NCO  
FINANCIAL SYSTEMS, INC.;  
AND RESURGENT CAPITAL  
SERVICES, L.P.,

Defendants.

Case No: 09 CV 1046 MMA BLM

**ANSWER OF DEFENDANT  
LVNV FUNDING LLC**

Date:  
Time:  
Courtroom: 5 (3<sup>rd</sup> Floor)  
Judge: Michael M. Anello  
Magistrate Judge: Barbara Lynn Major  
Complaint Filed: May 13, 2009  
Trial Date: October 12, 2010

TO THE CLERK OF THE ABOVE-ENTITLED COURT, ALL PARTIES  
AND THEIR ATTORNEYS OF RECORD:

Defendant LVNV Funding LLC ("LVNV"), as and for its Answer to the  
First Amended Complaint of Mercy Mesiano ("Plaintiff") in the above-entitled

1 matter, denies each and every allegation contained therein, unless otherwise  
2 admitted or qualified herein.

3  
4 **I.**

5 **RESPONSES TO PLAINTIFF'S ALLEGATIONS**

6 1. In response to Paragraph 1 of Plaintiff's Complaint, LVNV states that  
7 the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA"),  
8 speaks for itself and denies the allegations to the extent, if any, that they  
9 misinterpret or otherwise misconstrue the FDCPA or case law interpreting the  
10 FDCPA.  
11

12 2. In response to Paragraph 2 of Plaintiff's Complaint, LVNV has  
13 insufficient information and knowledge to either admit or deny the allegations set  
14 forth therein and therefore denies the same.  
15

16 3. In response to Paragraph 3 of Plaintiff's Complaint, LVNV admits  
17 that Plaintiff brought the instant action against Defendants seeking damages for  
18 alleged unlawful and abusive attempts to collect a debt allegedly owed by Plaintiff,  
19 but denies that Plaintiff is entitled to any damages from LVNV as there has been  
20 no violation of law by LVNV nor any unlawful or abusive attempts to collect a  
21 debt allegedly owed by Plaintiff by LVNV. To all other extents, LVNV has  
22 insufficient information and knowledge to admit or deny the allegations set forth  
23 therein and therefore denies the same.  
24

25 4. In response to Paragraph 4 of Plaintiff's Complaint, LVNV has  
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1 insufficient information and knowledge to either admit or deny the allegations set  
2 forth therein and therefore denies the same.

3 5. In response to Paragraph 5 of Plaintiff's Complaint, LVNV denies all  
4 allegations against it. To all other extents, LVNV has insufficient information and  
5 knowledge to admit or deny the allegations set forth therein and therefore denies  
6 the same.  
7

8 6. In response to Paragraph 6 of Plaintiff's Complaint, LVNV admits  
9 that the statutes referenced confer jurisdiction on this Court, but denies that  
10 jurisdiction is appropriate as to LVNV as it has not violated any law.  
11

12 7. In response to Paragraph 7 of Plaintiff's Complaint, LVNV admits  
13 that Plaintiff has brought this action alleging violations of the FDCPA and  
14 RFDCPA, but denies that it violated any law. To all other extents, LVNV has  
15 insufficient information and knowledge to admit or deny the allegations set forth  
16 therein and therefore denies the same.  
17

18 8. In response to Paragraph 8 of Plaintiff's Complaint, LVNV denies all  
19 allegations against it. To all other extents, LVNV has insufficient information and  
20 knowledge to admit or deny the allegations set forth therein and therefore denies  
21 the same.  
22

23 9. In response to Paragraph 9 of Plaintiff's Complaint, LVNV denies all  
24 allegations against it. To all other extents, LVNV has insufficient information and  
25 knowledge to admit or deny the allegations set forth therein and therefore denies  
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1 the same.

2 10. In response to Paragraph 10 of Plaintiff's Complaint, LVNV has  
3 insufficient information and knowledge to either admit or deny the allegations set  
4 forth therein and therefore denies the same.  
5

6 11. In response to Paragraph 11 of Plaintiff's Complaint, LVNV denies  
7 all allegations against it. To all other extents, LVNV has insufficient information  
8 and knowledge to admit or deny the allegations set forth therein and therefore  
9 denies the same.  
10

11 12. In response to Paragraph 12 of Plaintiff's Complaint, LVNV admits  
12 upon information and belief that Plaintiff is obligated to pay a debt, but has  
13 insufficient information and knowledge to either admit or deny the remaining  
14 allegations set forth therein and therefore denies the same.  
15

16 13. In response to Paragraph 13 of Plaintiff's Complaint, LVNV denies  
17 all allegations against it. To all other extents, LVNV has insufficient information  
18 and knowledge to admit or deny the allegations set forth therein and therefore  
19 denies the same.  
20

21 14. In response to Paragraph 14 of Plaintiff's Complaint, LVNV has  
22 insufficient information and knowledge to either admit or deny the allegations set  
23 forth therein and therefore denies the same.  
24

25 15. In response to Paragraph 15 of Plaintiff's Complaint, LVNV denies  
26 all allegations against it. To all other extents, LVNV has insufficient information  
27  
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1 and knowledge to admit or deny the allegations set forth therein and therefore  
2 denies the same.

3 16. In response to Paragraph 16 of Plaintiff's Complaint, LVNV has  
4 insufficient information and knowledge to either admit or deny the allegations set  
5 forth therein and therefore denies the same.

7 17. In response to Paragraph 17 of Plaintiff's Complaint, LVNV has  
8 insufficient information and knowledge to either admit or deny the allegations set  
9 forth therein and therefore denies the same.

11 18. In response to Paragraph 18 of Plaintiff's Complaint, LVNV denies  
12 all allegations against it. To all other extents, LVNV has insufficient information  
13 and knowledge to admit or deny the allegations set forth therein and therefore  
14 denies the same.

16 19. LVNV admits the allegations set forth in Paragraph 19 of Plaintiff's  
17 Complaint, upon information and belief.

19 20. In response to Paragraph 20 of Plaintiff's Complaint, LVNV has  
20 insufficient information and knowledge to either admit or deny the allegations set  
21 forth therein and therefore denies the same

23 21. In response to Paragraph 21 of Plaintiff's Complaint, LVNV has  
24 insufficient information and knowledge to either admit or deny the allegations set  
25 forth therein and therefore denies the same

27 22. In response to Paragraph 22 of Plaintiff's Complaint, LVNV admits  
28

1 upon information and belief that Plaintiff fell behind on the payments owed on the  
2 debt at issue in this matter prior to September 11, 2008, but has insufficient  
3 information and knowledge to either admit or deny the remaining allegations and  
4 therefore denies the same.  
5

6 23. In response to Paragraph 23 of Plaintiff's Complaint, LVNV has  
7 insufficient information and knowledge to either admit or deny the allegations set  
8 forth therein and therefore denies the same.  
9

10 24. In response to Paragraph 24 of Plaintiff's Complaint, LVNV admits  
11 upon information and belief that the Law Offices of Erica Brachfeld filed a lawsuit  
12 against Plaintiff, but has insufficient information and knowledge to admit or deny  
13 the remaining allegations and therefore denies the same.  
14

15 25. In response to Paragraph 25 of Plaintiff's Complaint, LVNV has  
16 insufficient information and knowledge to either admit or deny the allegations set  
17 forth therein and therefore denies the same.  
18

19 26. In response to Paragraph 26 of Plaintiff's Complaint, LVNV has  
20 insufficient information and knowledge to either admit or deny the allegations set  
21 forth therein and therefore denies the same.  
22

23 27. In response to Paragraph 27 of Plaintiff's Complaint, LVNV has  
24 insufficient information and knowledge to either admit or deny the allegations set  
25 forth therein and therefore denies the same.  
26

27 28. In response to Paragraph 28 of Plaintiff's Complaint, LVNV has  
28

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1 insufficient information and knowledge to either admit or deny the allegations set  
2 forth therein and therefore denies the same.

3 29. In response to Paragraph 29 of Plaintiff's Complaint, LVNV denies  
4 all allegations against it. To all other extents, LVNV has insufficient information  
5 and knowledge to admit or deny the allegations set forth therein and therefore  
6 denies the same.  
7

8 30. In response to Paragraph 30 of Plaintiff's Complaint, LVNV denies  
9 all allegations against it. To all other extents, LVNV has insufficient information  
10 and knowledge to admit or deny the allegations set forth therein and therefore  
11 denies the same.  
12

13 31. In response to Paragraph 31 of Plaintiff's Complaint, LVNV denies  
14 all allegations against it. To all other extents, LVNV has insufficient information  
15 and knowledge to admit or deny the allegations set forth therein and therefore  
16 denies the same.  
17

18 32. In response to Paragraph 32 of Plaintiff's Complaint, LVNV denies  
19 all allegations against it. To all other extents, LVNV has insufficient information  
20 and knowledge to admit or deny the allegations set forth therein and therefore  
21 denies the same.  
22

23 33. In response to Paragraph 33 of Plaintiff's Complaint, LVNV restates  
24 and realleges paragraph 1 through 32 of this Answer as though fully set forth  
25 herein.  
26  
27  
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1           34. In response to Paragraph 34 of Plaintiff's Complaint, LVNV denies  
2 all allegations against it. To all other extents, LVNV has insufficient information  
3 and knowledge to admit or deny the allegations set forth therein and therefore  
4 denies the same.

5  
6           35. In response to Paragraph 35 of Plaintiff's Complaint, LVNV denies  
7 all allegations against it. To all other extents, LVNV has insufficient information  
8 and knowledge to admit or deny the allegations set forth therein and therefore  
9 denies the same.

10  
11           36. In response to Paragraph 36 of Plaintiff's Complaint, LVNV restates  
12 and realleges paragraph 1 through 35 of this Answer as though fully set forth  
13 herein.

14  
15           37. In response to Paragraph 37 of Plaintiff's Complaint, LVNV denies  
16 all allegations against it. To all other extents, LVNV has insufficient information  
17 and knowledge to admit or deny the allegations set forth therein and therefore  
18 denies the same.

19  
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21           38. In response to Paragraph 38 of Plaintiff's Complaint, LVNV denies  
22 all allegations against it. To all other extents, LVNV has insufficient information  
23 and knowledge to admit or deny the allegations set forth therein and therefore  
24 denies the same.

25  
26           39. In response to Paragraph 39 of Plaintiff's Complaint, LVNV admits  
27 that Plaintiff seeks the relief requested therein, but denies that Plaintiff is entitled  
28



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1 to such relief from LVNV as there has been no violation of law.

2 40. In response to Paragraph 40 of Plaintiff's Complaint, LVNV admits  
3 that Plaintiff seeks the relief requested therein, but denies that Plaintiff is entitled  
4 to such relief from LVNV as there has been no violation of law.  
5

6 41. In response to Paragraph 41 of Plaintiff's Complaint, LVNV admits  
7 that Plaintiff seeks the relief requested therein, but denies that Plaintiff is entitled  
8 to such relief from LVNV as there has been no violation of law.  
9

10 42. In response to Paragraph 42 of Plaintiff's Complaint, LVNV admits  
11 that Plaintiff seeks the relief requested therein, but denies that Plaintiff is entitled  
12 to such relief from LVNV as there has been no violation of law.  
13

14 43. In response to Paragraph 43 of Plaintiff's Complaint, LVNV admits  
15 that Plaintiff seeks the relief requested therein, but denies that Plaintiff is entitled  
16 to such relief from LVNV as there has been no violation of law.  
17

18 44. In response to Paragraph 44 of Plaintiff's Complaint, LVNV admits  
19 that Plaintiff seeks the relief requested therein, but denies that Plaintiff is entitled  
20 to such relief from LVNV as there has been no violation of law.  
21

22 45. In response to Paragraph 45 of Plaintiff's Complaint, LVNV admits  
23 that Plaintiff demands a trial by jury, but denies that a trial by jury is appropriate  
24 with respect to LVNV as there has been no violation of law.  
25

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II.

**AFFIRMATIVE DEFENSES**

**FIRST DEFENSE**

Plaintiff's Complaint fails to state a claim upon which relief may be granted.

**SECOND DEFENSE**

LVNV's actions have not been willful, to the extent that they violate California or federal law, which LVNV denies.

**THIRD DEFENSE**

Plaintiff failed to exercise ordinary and reasonable care on her own behalf, and such negligence and carelessness was a proximate cause of some portion, up to and including the whole of, the damages alleged by Plaintiff and her recovery should therefore be barred or reduced according to law.

**FOURTH DEFENSE**

Plaintiff's claims are barred by the doctrines of laches, estoppel, acquiescence, and waiver.

**FIFTH DEFENSE**

Any violation of the law or damage suffered by Plaintiff, which LVNV denies, was due to the affirmative actions and/or omissions of Plaintiff and do not give rise to any liability of LVNV.

**SIXTH DEFENSE**

Plaintiff's action against LVNV is barred, in whole or in part, by the applicable statute(s) of limitations.

**SEVENTH DEFENSE**

Any damage to Plaintiff, which LVNV denies, is due to the acts or omissions of Plaintiff and/or third parties and LVNV is not liable for said acts, omissions or alleged damages.

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EIGHTH DEFENSE

Plaintiff's claims are barred by the lack of proximate cause.

NINTH DEFENSE

Plaintiff's claims are barred because Plaintiff failed to mitigate her damages.

TENTH DEFENSE

Plaintiff's claims are barred by her lack of standing.

ELEVENTH DEFENSE

Plaintiff's claims are barred because Plaintiff failed to perform as agreed in breach of her contracts with her underlying creditors.

TWELFTH DEFENSE

Plaintiff's claims are barred by Plaintiff's unclean hands.

THIRTEENTH DEFENSE

Plaintiff's claims are barred by the doctrine of unjust enrichment.

FOURTEENTH DEFENSE

Plaintiff's claims are barred by the doctrine of res judicata/collateral estoppel.

FIFTEENTH DEFENSE

Plaintiff's claims are barred by the defense of in pari delicto.

SIXTEENTH DEFENSE

Upon information and belief, Plaintiff may be contractually obligated to arbitrate any dispute, claim or controversy which arises out of the transaction that is the subject matter of the instant litigation.

SEVENTEENTH DEFENSE

Plaintiff's claims are barred because the statements or acts attributed to LVNV, if made, were privileged communication by interested parties, without malice, to interested persons who requested the information.

///

1 EIGHTEENTH DEFENSE

2 Any violation of the Fair Debt Collection Practices Act, title 15 of the  
3 United States Code sections 1692 *et seq.*, or the Rosenthal Fair Debt Collection  
4 Practices Act, California Code sections 1788 *et seq.*, if applicable, was not  
5 intentional and was the result of a bona fide error notwithstanding the maintenance  
6 of procedures reasonably adapted to avoid such error.

7 NINETEENTH DEFENSE

8 Plaintiff suffered no damage from the alleged violations by LVNV and  
9 therefore is not entitled to any award of damages, attorneys' fees or costs.

10 TWENTIETH DEFENSE

11 LVNV was not a debt collector as defined under California or federal law, in  
12 regard to the instant matter.

13 TWENTY-FIRST DEFENSE

14 All of LVNV's actions have been in accordance with California and federal  
15 debt collection practices and consumer credit laws.

16 TWENTY-SECOND DEFENSE

17 LVNV may have additional defenses that cannot be articulated due to  
18 Plaintiff's failure to particularize her claims, due to the fact that LVNV does not  
19 have copies of certain documents bearing on Plaintiff's claims and due to  
20 Plaintiff's failure to provide more specific information concerning the nature of the  
21 damage claims and claims for certain costs which Plaintiff alleges that LVNV may  
22 share some responsibility. LVNV therefore reserves the right to assert additional  
23 defenses upon further particularization of Plaintiff's claims, upon examination of  
24 the documents provided, upon discovery of further information concerning the  
25 alleged damage claims and claims for costs, and upon the development of other  
26 pertinent information.

27 ///

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III.

**PRAYER FOR RELIEF**

WHEREFORE, Defendant LVNV prays for an order and judgment of this Court in its favor against Plaintiff as follows:

1. Dismissing all causes of action against it with prejudice and on the merits;
2. Awarding its reasonable costs and attorneys' fees; and
3. Awarding it such other and further relief as the Court deems just and equitable.

MOSS & BARNETT, P.A.

Dated: February 25, 2010

By: s/ Issa K. Moe  
ISSA K. MOE  
Attorneys for Defendant  
LVNV FUNDING LLC

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Attorneys for Defendant  
LVNV FUNDING, LLC

**UNITED STATES DISTRICT COURT  
SOUTHERN OF CALIFORNIA**

MERCY MESIANO,

Plaintiff,

v.

ERICA BRACHFELD AND LAW  
OFFICES OF BRACHFELD &  
ASSOCIATES, PC; LVNV  
FUNDING LLC; NCO  
FINANCIAL SYSTEMS, INC.;  
AND RESURGENT CAPITAL  
SERVICES, L.P.,

Defendant.

Case No: 09 CV 1046 MMA BLM

**CERTIFICATE OF SERVICE**

Courtroom: 5 (3<sup>rd</sup> Floor)  
Judge: Michael M. Anello  
Magistrate Judge: Barbara Lynn Major  
Complaint Filed: May 13, 2009  
Trial Date: October 12, 2010

**CERTIFICATE OF SERVICE**

STATE OF MINNESOTA )

COUNTY OF HENNEPIN )

I declare that:

I am and was at the time of service of the papers herein, over the age of eighteen (18) years and am not a party to the action. I am employed in the County of Hennepin, Minnesota, and my business address is 4800 Wells Fargo Center, 90 South 7th Street, Minneapolis, Minnesota 55402.

On **February 25, 2010**, I caused to be served the following documents:**ANSWER OF DEFENDANT LVNV FUNDING, LLC**

- ☐ **BY REGULAR MAIL:** I caused such envelopes to be deposited in the United States mail, at Minneapolis, Minnesota, with postage thereon fully prepaid, individually, addressed to the parties as indicated. I am readily familiar with the firm's practice of collection and processing correspondence in mailing. It is deposited with the United States postal service each day and that practice was followed in the ordinary course of business for the service herein attested to. (Fed. R. Civ. P. 5(b)(2)(B).)
- ☐ **BY OVERNIGHT SERVICE:** I caused such envelopes to be delivered by Overnight/Express Mail Delivery to the addressee(s) noted in this Certificate of Service.
- ☐ **BY FACSIMILE TRANSMISSION:** I caused a true copy of the foregoing document(s) to be transmitted (by facsimile # ) to each of the parties mentioned above at the facsimile machine and as last given by that person on any document which he or she has filed in this action and served upon this office.
- ☒ **BY ELECTRONIC FILING SERVICE:** By electronically filing the foregoing document(s) using the CM/ECF system. Service of an electronically filed document upon a CM/ECF User who has consented to electronic service is deemed complete upon the transmission of the Notice of Electronic Filing ("NEF"). The NEF will be maintained with the original document(s) in our office.
- ☐ **BY PERSONAL SERVICE:** I served the person(s) listed below by leaving the documents, in an envelope or package clearly labeled to identify the person being served, to be personally served via Metro Legal Services on the parties listed on the service list below at their designated business address.
- ☐ By personally delivering the copies;
- ☐ By leaving the copies at the attorney's office;
- ☐ With a receptionist, or with a person having charge thereof; or

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☐ In a conspicuous place in the office between the hours of \_\_\_\_\_  
in the morning and five in the afternoon;

☐ By leaving the copies at the individual's residence, a conspicuous  
place, between the hours of eight in the morning, and six in the  
afternoon.

I declare that I am employed in the office of a member of the bar of this  
Court, at whose direction the service was made.

**SEE ATTACHED SERVICE LIST**

I am readily familiar with the firm's practice of collection and processing  
correspondence for mailing. Under that practice, it would be deposited with the  
United States Postal Service on that same day with postage thereon fully prepaid at  
Minneapolis, Minnesota, in the ordinary course of business. I am aware that on  
motion of the party served, service is presumed invalid if postal cancellation date  
or postage meter date is more than one day after the date of deposit for mailing in  
affidavit.

I declare under penalty of perjury under the laws of the State of California  
that the foregoing is true and correct.

Executed on February 25, 2010, at Minneapolis, Minnesota.

/s/ Issa K. Moe  
Issa K. Moe

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## Service List

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BRACHFELD & ASSOCIATES, PC; LVNV FUNDING LLC; NCO  
FINANCIAL SYSTEMS, INC.; AND RESURGENT CAPITAL SERVICES, L.P.

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<b>David J. Kaminski</b> <b>Michael P. Lavigne</b> Carlson and Messer 5959 West Century Blvd Suite 1214 Los Angeles, CA 90045	T: (310) 242-2200 F: (310) 242-2222  Attorneys for Defendants ERICA L. BRACHFELD and LAW OFFICES OF BRACHFELD & ASSOCIATES, PC
<b>Christopher D. Holt</b> KLINEDINST PC 5 Hutton Centre Drive, Suite 1000 Santa Ana, California 92707	T: (714) 542-1800 F: (714) 542-3592  Attorneys for Defendants RESURGENT CAPITAL SERVICES, L.P. and LVNV FUNDING, LLC

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